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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 522

UNITED STATES *ex rel.* GEORGE E. THOMPSON,
Petitioner

v.

WILLIAM LENNON, Sheriff of Philadelphia,
Respondent

REPLY BRIEF TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE THIRD CIRCUIT

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Respondent's opposition purportedly raises new and different issues to those presented by petitioner and discussed in the brief amicus of the State of New Jersey. These deviations simply attempt to create false issues, demonstrably so, in that petitioner, without compromising his position in the slightest, would agree with respondent that the answers to both counterstated questions should be "no." But these are not the questions this court is being asked to consider.

Neither counterstated question specifies the total absence of local contacts independent of the performance of duties as an employee of the United States in a place under the exclusive jurisdiction of the United States.

Counterstated Question I translates petitioner's narrow but important claim that under these circumstances he is imprisoned for an act done or omitted in pursuance of the laws of the United States, to the amorphous term, "challenge the validity of the ordinance." The nature of the claim is not only unspecified in terms of the circumstances, but those circumstances are obscured by loose description, and a most important one, that state custody was assumed and maintained in a place under the exclusive jurisdiction of the United States until application was made to the federal court for writ of habeas corpus, is omitted.

Counterstated Question II clearly embraces cases where a federal employee has local contacts independent of his federal employment. Non-residence, for example, does not preclude the traditionally recognized contact of domicile.

Respondent pursues these false issues throughout his brief: Discussion of the exhaustion principle in general terms only, its relative the Pennsylvania Habeas Corpus Act, unchallenged applications of the ordinance* in situations like the *O'Keefe* case, 306 U.S. 466 (local contact: state residence) and *Howard v. Commissioners*, 344 U.S. 624 (local contact: county

* The text of the ordinance was pleaded by the City in its "Affidavit to Hold to Bail," attached to the petition, and a part of the record (R. 6a-7a). The text in respondent's brief is essentially the same, except that there is some immaterial difference in the amount specified.

residence), etc. In reply, petitioner points out, as in the distinctions made with respect to the counterstated questions, that this case does not fit into the routine pigeon holes respondent has fashioned for it.

Yet the force of the real issues requires some disposition. Respondent says (p. 7), "* * * the District court found as a matter of fact that petitioner's refusal to file a return and pay a tax was not 'an act done or omitted in pursuance of the laws of the Congress of the United States.'" What respondent here treats as a "finding of fact by the trial judge," is one of the crucial questions of law in this case. This treatment of it is the more astounding when it is remembered that this case was disposed of by the trial court on motion to dismiss the petition as insufficient on its face, and without the taking of evidence.

Nor is the issue disposed of by epigram: "Petitioner's failure to pay his tax was not a part of his duties as a civilian employee of the Federal Government." (p. 7). One might as well say that murder was no part of Marshal Neagle's duties, and that failure to obtain a driver's license was no part of a mail-truck driver's duties. *In re Neagle*, 135 U.S. 1, *Johnson* v. *Maryland*, 254 U.S. 51. Analysis might proceed more fruitfully by considering the nature of the activity upon which the local obligation was incident.

The thrust of the real issues in this case may be seen through respondent's counterstatement of it where, speaking of the local sheriff taking petitioner into custody at the Navy Yard, he claims this was done:

"With the consent of the appropriate federal authorities at the Naval Shipyard (R. 22a) and pursuant to the Act Cession of April 4, 1866, P.L. 96, s. 1. note, permitting all State process to extend into the Navy Yard * * *" (p. 3).

Petitioner will not pause to deal with the welter of inaccuracies contained in so brief a quote except to note that the whole question here is:

Whether the federal government did give its consent to the arrest and imprisonment of a federal employee in a federal enclave by local authorities, absent a local contact; and if so, whether such consent violated the 4th and 5th Amendments.

This question is important to petitioner, over 2,000 federal employees at the Shipyard similarly situated, the State of New Jersey, the "appropriate federal authorities" at the Shipyard and elsewhere, as well as federal employees all over the country.

The question is principally important, however, in the development of federal jurisprudence. It has not been, but should be settled by this court.

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